

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1424

Bioenergy Program

AGENCY: Commodity Credit Corporation, USDA.

PART 1424--**BIOENERGY** PROGRAM

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Authority: 15 U.S.C. 714 c (e); Section 5(e) of the Commodity Credit Corporation Charter Act.

Sec. 1424.1 Applicability.

This part establishes the **Bioenergy** Program (Program). It sets forth the terms and conditions a **bioenergy** producer must meet to obtain payments from the Commodity Credit Corporation (CCC) for eligible **bioenergy** production. Additional terms and conditions are set forth in Form CCC-850, **Bioenergy** Program Agreement.

Sec. 1424.2 Administration.

(a) On behalf of CCC, the Farm Service Agency (FSA) will administer the provisions of this part under the general direction and supervision of the Deputy Administrator, Commodity Operations (Deputy Administrator), FSA.

(b) The Deputy Administrator or a designee may authorize a waiver or modification of deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the Program, and may set such additional requirements as will facilitate the operation of the program.

Sec. 1424.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration under this subpart.

Agreement means the **Bioenergy** Program Agreement, Form CCC-850. Application means the **Bioenergy** Program Application, Form CCC-850-A.

ATF is the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury.

Biodiesel is a nontoxic, biodegradable replacement for or additive to petroleum diesel derived from the oils and fats of plants and animals and manufactured in the United States. Chemically, biodiesel is described as a mono alkyl ester.

Biodiesel producer is a producer that produces and sells biodiesel who is also registered and in good standing with Environmental Protection Agency under Clean Air Act Amendment of 1990, Title II, Section 211(b).

Bioenergy means ethanol and biodiesel produced from eligible commodities.

Eligible commodity means barley, corn, grain sorghum, oats, rice, wheat, soybeans, sunflower seed, canola, crambe, rapeseed, safflower, sesame seed, flaxseed, mustard seed, and cellulosic crops, such as switchgrass and short rotation trees, grown on farms for the purpose of producing ethanol and or biodiesel or any other commodity or commodity by-product as determined and announced by CCC used in ethanol and biodiesel production which is produced in the United States and its territories.

Eligible producer means a **bioenergy** producer who has been determined by CCC to be eligible to receive Program payments and has entered into an Agreement with CCC.

Ethanol is anhydrous ethyl alcohol manufactured in the United States and sold:

(1) For fuel use and which has been rendered unfit for beverage use in a manner and which is produced at a facility approved by the ATF for the production of ethanol for fuel, or

(2) As denatured ethanol used by blenders and refiners which has been rendered unfit for beverage use.

Ethanol producer is a producer that has authority from the ATF to produce ethanol.

FSA means the Farm Service Agency, USDA.

FY means fiscal year beginning each October 1 and ending September 30 of the following year.

Gallon Conversion factor shall be:

(1) 2.5 bushels, unless otherwise determined through review of an individual Program participant by CCC, of ethanol produced per bushel of corn used in ethanol production;

(2) 1.4 bushels, unless otherwise determined through review of an individual Program participant by CCC, of biodiesel per bushel of soybeans used in biodiesel production; or

(3) As determined by CCC for other eligible commodities.

KCCO means Kansas City Commodity Office.

Producer is a legal entity (individual, partnership, cooperative, or corporation, etc.) who is a commercial **bioenergy** producer making application under this program.

Quarter means the respective time periods of October 1 through December 31, January 1 through March 31, April 1 through June 30, and July 1 through September 30 of each FY, as applicable.

USDA means the United States Department of Agriculture.

Sec. 1424.4 General eligibility rules.

To obtain Program payments, a producer must do all of the following:

(a) Obtain an Agreement, Form CCC-850, from the KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri

64141-6205 or via the internet at:

www.fsa.usda.gov/daco/bioenergy/bioenergy.htm;

(b) Submit a completed Agreement, Form CCC-850, to CCC no later than October 1 of each year or a later date, if announced by CCC, to KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri 64141-6205;

(c) Be assigned an Agreement number by KCCO indicating the producer is eligible for program payments;

(d) Maintain records indicating:

(1) Commodities for which it seeks payment;

(2) The quantity of **bioenergy** produced from an eligible commodity by location during the quarter FY to date compared to the same time period in the previous FY; and

(3) The quantity of eligible commodity used to produce the **bioenergy** stated in paragraph (d)(2) of this section during the quarter FY to date compared to the same time period in the previous FY;

(e) Furnish CCC such certification, and access to such records, as CCC considers necessary to verify compliance with Program provisions;

(f) Make Application submissions in accordance with Sec. 1424.9;

(g) If not purchasing raw commodity input, be able to prove to CCC's satisfaction that both the producer's net purchases of eligible commodities and net production of **bioenergy** increased as compared to such production at all locations during the relevant base period.

Except as otherwise provided for by CCC, the increase in production must equal or exceed that amount of energy production which would be calculated using the gross amount of agricultural commodities which forms the basis of the payment and the conversion factor set out in Sec. 1424.2. Example: A producer that purchases soy oil from a soybean crushing plant for further refinement into biodiesel must be able to prove to CCC's satisfaction that both soy oil purchases and biodiesel production increased for the applicable quarter;

(h) Certify the accuracy and truthfulness of the information provided in their Agreement on Form CCC-850; and

(i) Allow verification by CCC of all information provided. Refusal to allow CCC or any other agency of USDA to verify any information provided will result in a determination of ineligibility.

(j) Meet all other conditions for payment which are set out in the Agreement or in these **regulations** or otherwise.

Sec. 1424.5 Application process.

To receive payments under this program during a FY, an eligible producer must:

(a) Have an approved Agreement in accordance with Sec. 1424.4(b) and an Agreement number assigned by KCCO under Sec. 1424.4(c);

(b) Obtain an Application, Form CCC-850-A, from the KCCO, Contract Reconciliation Division, STOP 8758, P.O. Box 419205, Kansas City, Missouri 64141-6205 or via the internet at:

www.fsa.usda.gov/daco/bioenergy/bioenergy.htm;

(c) Submit applications for each quarter. Submit the last quarterly application of the FY within 30 calendar days of the end of the FY for which payment is requested. If the actual deadline is a non-workday, the deadline will be the next business day;

(d) Submit other relevant documents as required by CCC for the specific commodity; and

(e) Certify with respect to the accuracy and truthfulness of the

information provided.

Sec. 1424.6 Eligibility determinations.

- (a) Applicants will, after Agreements are submitted, if:
 - (1) Determined eligible, receive notification of eligibility;
 - (2) Determined ineligible, be notified in writing of ineligibility for program participation and reason for the determination; or
 - (3) Additional information is needed for CCC to determine eligibility, be contacted for additional supporting documentation.
- (b) Applicants will, after Applications are submitted, if:
 - (1) Determined eligible, receive payment;
 - (2) Determined ineligible, be notified in writing of ineligibility for payment and reason for determination; or
 - (3) Additional information is needed for CCC to determine eligibility, be contacted for additional supporting documentation.

Sec. 1424.7 [Reserved]

Sec. 1424.8 Payment amounts.

(a) Eligible producer may be paid the amount specified in this section, subject to the availability of funds. Funds shall be considered available only to the extent determined appropriate by CCC. Unless otherwise determined by CCC, that amount shall be no more than \$150 million in FY 2001 and no more than an additional \$150 million in FY 2002.

(b) Eligible producer must sign an agreement to participate. Such an agreement must be signed during the designated sign-up period. Thereafter, producers must file a report of their production at all locations for the program year to date through the respective quarter for each such report. Such reports must comply with the terms of the agreement and these **regulations**.

(c) Persons will be eligible for payments only to the extent that their production of eligible energy from eligible inputs is, for the program year to date, as compared to the comparable portion of the previous year, in excess of their total comparable production at all locations. Producers will not be paid twice for the same increase and any decline in relative production between quarters will require a comparable refund as specified below. That is, for example, if a producer were to be paid, at the end of the first quarter, for an increase of 500 units of energy production, but by the end of the second quarter that producer's production, for the year to date, was down to a net increase for the year of 450 units, then a refund would be due for the loss of the corresponding 50 units of net extra production. For these purposes unless CCC shall agree otherwise in order to facilitate the program, ``all locations'' for these and other purposes within these **regulations** shall mean any and all locations in which the producer had an interest now (in the current FY) or in the previous FY, irrespective of whether the producer still has such an interest in that facility. Eligibility determinations will be made on the basis of aggregating production figures from all such locations and shall include production by all persons at those locations for the current and preceding FY, not just the production of the producer. Also, the CCC may in the program agreement require that the producer certify the amount of the actual increased use of agricultural commodities for energy production at all such locations for the relevant

period and make adjustment in the formulaic payments that would otherwise be made to the producer if there is a difference between that certification and the amount of increased commodity use as calculated under the formula.

(d) The submitted agreements filed during the sign-up period will require that the applicant set out the expected increase in production and other information as the agency may demand. Based on expected commodity prices, following the formula set out in this section, all such submissions will be assigned an expected value. Should the total expected value of all such agreements exceed the available funding, then a proration factor will be developed to factor the agreements down to the funding made available by CCC.

(e) Subject to the provisions of this section and conditions specified in the Agreement, a producer's payment eligibility shall be adjusted at the end of each quarter, and figured as follows:

(1) the extra production in energy from eligible inputs will be converted to gross payable bushels (or other applicable agricultural unit) by, unless otherwise determined by CCC:

(i) Allowing, as applicable, 1 bushel of corn for each increase of 2.5 gallons of ethanol;

(ii) Allowing, as applicable, 1 bushel of soybeans for each increase of 1.4 gallons of biodiesel production;

(iii) Such other method for other eligible agricultural commodities as CCC deems appropriate.

(2) The gross payable bushels, or other gross units, calculated under paragraph (e)(1) of this section shall then be converted to a net payable bushel (or other unit amount) by:

(i) For producers whose annual **bioenergy** production is less than 65 million gallons, allowing 1 net payable bushel for every 2.5 gross payable bushels of corn or soybeans, or by allowing a similar conversion in the event that there are other eligible agricultural commodities involved in the calculation;

(ii) For producers whose annual **bioenergy** production is equal to or more than 65 million gallons, allowing 1 net payable bushel for every 3.5 gross payable bushels of corn or soybeans, or by allowing a similar conversion in the event that there are other eligible commodities involved;

(3) The net payable bushel (or other unit) agricultural commodity amount calculated under paragraph (e)(2) of this section, shall be then converted to a gross payment by multiplying that commodity amount by the per unit value for the commodity determined as follows:

(i) For those agricultural commodities with established terminal market prices, the CCC will use the applicable terminal market price for the last day of the program quarter announced daily by the KCCO, FSA, adjusted by the county average differential for the county in which the plant is located and the applicable quality factors determined by CCC. For this purpose the terminal market and differential used by CCC in determining different values for different locations will, to the extent practical, be the same as that used for producers under other major CCC commodity programs for determining marketing loan gains and other matters.

(ii) For those agricultural commodities that do not, as determined by CCC, have acceptable established terminal prices, the price shall be as determined by CCC based on such market data as appears to be appropriate for a fair evaluation.

(4) The gross payment calculated under paragraph (e)(3) of this section shall be reduced to a net payment by multiplying the gross payment figure by the proration factor determined under paragraph (d) of this section.

(5) Subject to other provisions of this section, producers shall be paid the net current payment, if positive, determined for the first quarter.

(6) After the first quarter, adjustments shall be made based on changes

in production. New or renewed increases shall be paid using the formula set out above using current per unit values. Refunds, when due, shall be due at the per unit values at which they were paid unless CCC determines otherwise.

(7) If despite or in the absence of a proration under paragraph (d) of this section funds shall not be sufficient to cover payments due for any quarter then CCC shall prorate, or further prorate, the claims in such manner as CCC deems fit.

(8) No producer may receive more than five percent of the available funding for this program and determinations of payment eligibility shall take that limit into account.

Sec. 1424.9 Reports required.

Once an eligible producer has submitted an Agreement, Form CCC-850, that producer shall file information for each **bioenergy** producing facility quarterly through the end of the applicable FY as specified by CCC.

Sec. Sec. 1424.10 Succession and control of facilities and production.

A person who obtains a facility which is under contract under this part may request permission to succeed to the program contract and CCC may grant such request if it is determined that permitting such succession would serve the purposes of the program. As determined to be appropriate, CCC may require the consent of the original party to such succession and likewise CCC may terminate a contract and demand a full refund of payments made if a contracting party loses control of a facility whose increased production is the basis of a program payment or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

Sec. 1424.11 Maintenance and inspection of records.

For the purpose of verifying compliance with the requirements of this part, each eligible producer shall make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, contracts, scale tickets, settlement sheets, invoices, written price quotations, or other documents related to the program that is within the control of such entity for not less than 3 years from the payment date.

Sec. 1424.12 Appeals.

(a) Any producer who is subject to an adverse determination made under this part shall have a right to appeal the determination by filing a written request with the Deputy Administrator at the following address: Deputy Administrator, Commodity Operations, Farm Service Agency, United States Department of Agriculture, STOP 0550, 1400 Independence Avenue, SW., Washington, DC 20250-0550.

(b) Any producer who believes that they have been adversely affected by a determination under this part must seek review with the Deputy Administrator within thirty days of such determination, unless provided with notice by FSA which provides a different time for appealing.

(c) Any producer who believes that they have been adversely affected by a determination by the Agency, must seek review with the Deputy Administrator

before any other review may be requested within the Agency.

Sec. 1424.13 Misrepresentation and scheme or device.

(a) A producer shall be ineligible to receive payments under this program if CCC determines the producer:

(1) Adopted any scheme or device which tends to defeat the purpose of the program in this part;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a producer engaged in a misrepresentation, scheme, or device, or to any other person as a result of the **bioenergy** producer's actions, shall be refunded with interest together with such other sums as may become due, plus damages as may be determined by CCC.

(c) Interest charged under this part shall at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such funds available. Such interest shall accrue from the date such payments were made available to the date of repayment or the date interest increases as determined in accordance with applicable **regulations**.

(d) CCC may waive the accrual of interest and or damages if CCC determines that the cause of the erroneous determination was not due to any action of the **bioenergy** producer.

(e) Any producer or person engaged in an act prohibited by this section and any producer or person receiving payment under this part shall be jointly and severally liable for any refund due under this part and for related charges.

(f) The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

(g) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in, 7 CFR part 1403.

(h) Other limitations may apply.